

54 United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	James B. Moran	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	03 C 4210	DATE	10/20/2003
CASE TITLE	DIPAK BHAYANI vs. SUE SOOD and REALTY SOUTH, INC.		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

MOTION:

MEMORANDUM OPINION AND ORDER

DOCKET ENTRY:

- (1) ☐ Filed motion of [use listing in "Motion" box above.]
- (2) ☐ Brief in support of motion due _____.
- (3) ☐ Answer brief to motion due _____. Reply to answer brief due _____.
- (4) ☐ Ruling/Hearing on _____ set for _____ at _____.
- (5) ☐ Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
- (6) ☐ Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
- (7) ☐ Trial[set for/re-set for] on _____ at _____.
- (8) ☐ [Bench/Jury trial] [Hearing] held/continued to _____ at _____.
- (9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]
☐ FRCP4(m) ☐ Local Rule 41.1 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).
- (10) ☒ [Other docket entry] Enter Memorandum Opinion And Order. Defendants' objections to the bankruptcy court's findings of fact and conclusions of law are denied.
- (11) ☒ [For further detail see order attached to the original minute order.]

No notices required, advised in open court.	U.S. DISTRICT COURT CLERK 03 OCT 20 PM 4:26 Date/time received in central Clerk's Office	number of notices	Document Number 12
No notices required.		OCT 21 2003 date docketed	
Noticed counsel by telephone.		<i>[Signature]</i> docketing deputy initials	
<input checked="" type="checkbox"/> Docketing to mail notices.		date mailed notice	
<input checked="" type="checkbox"/> Mail AO 450 form.		mailing deputy initials	
Copy to judge/magistrate judge.			
LG	courtroom deputy's initials		

DOCKETED
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Defendants.

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Bhayani did successfully introduce the deposition testimony of George Paluch, a commercial real estate broker who frequently works with fast-food restaurant chains. In his deposition, Paluch testified that the land owned by Bhayani was worth about \$25,000 without the adjacent lot. Together, however, he testified that the two parcels of land had a value of \$350,000. Paluch also testified that Wendy's backed out of a deal with Bhayani after learning that the second parcel had been purchased by Sood. Defendants' counsel did not object to the deposition testimony of Paluch when offered into evidence at trial.

On June 5, 2003, the bankruptcy court issued its findings of fact and conclusions of law recommending a judgment in favor of Bhayani against defendants in the amount of \$288,000. In determining this amount, the court found that the value of the land was \$350,000 and subtracted the value of Bhayani's land (\$25,000) and the cost of the parcel purchased by Sood (\$37,000).

Pursuant to Fed.R.Bankr.P. 9033(b) defendants had a 10-day period following the issuance of the findings in order to file objections, but failed to do so. Bankruptcy courts are allowed to extend this period for an additional 20 days if the moving party makes a showing of excusable neglect. On July 7, 2003, after retaining new counsel, defendants filed a motion for leave to file late objections to the findings. On July 16, 2003, the bankruptcy court denied their motion, finding that defendants failed to demonstrate excusable neglect. On September 3, 2003, defendants filed these objections, arguing that the bankruptcy court improperly relied on hearsay evidence in reaching its finding that the value of the land was \$350,000.

We are not given any good reason for overturning the bankruptcy court's ruling that the objections were untimely. Moreover, setting aside the timing issues, we find that defendants' objections fail on the merits. Although Paluch was not listed as an expert witness,


his deposition testimony was a combination of fact and opinion. His testimony was, however, admitted without objection. He stated in his deposition that he believed the value of the land (both parcels together) to be \$350,000. He based this conclusion on his knowledge of the land and experience in dealing with similar fast-food chains, as well as his conversations with Wendy's. The fact that he mentioned the letter from Wendy's does not disqualify his findings as to the value of the land. The trial court's determination that the land was valued at \$350,000 therefore has substantial support in the record. Defendants also submitted no evidence at trial to contradict Paluch's valuation of the land.

We also note that defendants' proposed valuation of the land has no support in the record. They argue that the damages should be \$37,000, the amount paid by Sood for the second parcel of land. We fail to see how Bhayani could have suffered damages in this amount. Even accepting defendants' contention that the price paid by Sood represents its value, this does not take into consideration Bhayani's costs of acquiring the land or the potential value of the parcels of land when put together.

The trial court's approach to the damages issue was correct. Bhayani was damaged to the extent that Sood's actions prevented him from capitalizing on the value of the land. The evidence in the record clearly supports the conclusion that this amount was \$288,000.

CONCLUSION

For the foregoing reasons, defendants' objections to the bankruptcy court's findings of fact and conclusions of law are denied.


JAMES B. MORAN
Senior Judge, U. S. District Court

03.20, 2003.